

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC 20554

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 FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)
)
 The Development of a National Framework to)
 Detect and Deter Backsliding to Ensure)
 Continued Bell Operating Company Compliance)
 with Section 271 of the Communications Act)
 Once In-region InterLATA Relief Is Obtained)

RM 9474

Comments of Intermedia Communications Inc.

Intermedia Communications Inc., by its counsel, hereby submits its comments in support of Allegiance Telecom's Petition for Rulemaking ("Allegiance Petition" or "Petition"), which was filed with the Commission on February 1, 1999. As noted in the paragraphs that follow, Intermedia believes that developing a comprehensive framework to detect and deter Bell Operating Company ("BOC") backsliding is critical to ensuring ongoing BOC compliance with the section 271 Competitive Checklist and any related commitments made by a BOC in exchange for interLATA relief. Thus, Intermedia submits that the Commission should convene immediately a rulemaking proceeding in accordance with the Allegiance Petition.

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 List A B C D E

I. THE COMMISSION SHOULD ESTABLISH A COMPREHENSIVE BACKSLIDING PREVENTION FRAMEWORK, INCLUDING PERFORMANCE STANDARDS, A 271 COMPLAINT PROCEDURE, AND ENFORCEMENT PENALTIES

As Allegiance indicates in its Petition, voluntary BOC commitments to implement the procompetitive provisions of the Act have proven nearly unenforceable, and Intermedia submits that ensuring BOC compliance with section 271 commitments will become equally difficult once in-region interLATA relief is received, unless the Commission acts now to define an antibacksliding framework. In accordance with the Allegiance Petition, Intermedia supports the view that a national antibacksliding framework should include: (1) verifiable performance standards, (2) complaint procedures, and (3) enforceable remedies in order to ensure that the section 271 Competitive Checklist does not become a list of paper promises, once in-region interLATA relief is obtained.

In previous section 271 decisions, this Commission has held that a BOC must demonstrate that “it has a concrete and specific obligation to furnish ... each checklist item ... in the quantities that competitors may reasonably demand and at an acceptable level of quality” before 271 relief may be granted.¹ Intermedia supports this standard, and, as suggested in the Allegiance Petition, performance standards for each element of the Competitive Checklist are necessary to ensure that a BOC “is providing” and continues to provide CLECs quality service, in accordance with section 271 of the Act.

¹ *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana*, Memorandum Opinion and Order, CC Docket No. 97-137, 13 FCC Rcd 20599 at ¶ 78 (1998).

To enforce section 271-related obligations, the Commission should establish a section 271 complaint procedure, as suggested in the Allegiance Petition.² Section 271(d)(6)(B) of the Communications Act mandates that the Commission establish a complaint procedure for handling complaints regarding a BOC's failure to satisfy its section 271 obligations, and that these complaints be resolved by the Commission within 90 days.³ Intermedia supports the view that the Commission should establish a 271 complaint procedure prior to Commission approval of a section 271 application. Additionally, Intermedia supports Allegiance's recommendation that the complaint process: (1) be modeled after the Rocket Docket, (2) include a consultative role for the Department of Justice, and (3) permit a finding of fault in the cases of service outages and related network problems.⁴

Finally, in addition to developing performance standards and complaint procedures, Intermedia agrees that the Commission should establish meaningful remedies for BOC noncompliance. As a general matter, Intermedia supports Allegiance's three-tiered penalty approach, which would "ratchet up" pressure for continued noncompliance.⁵ Intermedia agrees that by gradually increasing pressure on BOCs to comply with section 271 through the three-tiered remedy structure, the impact of BOC noncompliance on consumers and on competition will be mitigated.

In the end, the commercial success of all CLECs is, to some degree, dependent on the BOCs' compliance with section 271. To date, the promise of entry into in-region long

² Allegiance Petition at 22-24.

³ 47 U.S.C. § 271(d)(6)(B).

⁴ Allegiance Petition at 23-24.

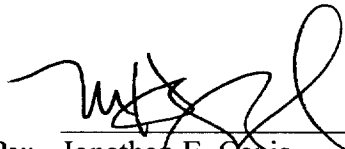
⁵ *Id.* at 24-28.

distance has served as a carrot to encourage the BOCs to open their markets. Once a BOC obtains in-region interLATA relief, however, a BOC will have little incentive to do more than (in Allegiance's words) the "rock bottom" minimum to serve CLEC customers.⁶ Thus, the establishment of performance measures, complaint procedures, and remedies for nonperformance are critical to ensuring that BOCs meet their statutory obligations. The Allegiance Petition outlines a strong roadmap for the establishment of a workable framework to ensure continued compliance, and therefore, the Commission should institute a rulemaking proceeding consistent with the Petition.

II. CONCLUSION

For the foregoing reasons, Intermedia respectfully requests that the Commission establish a rulemaking proceeding, consistent with the Allegiance Petition, to prevent BOC backsliding once 271 relief is obtained.

Respectfully submitted,


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⁶ *Id.* at 4.